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SUPREME COURT OF THE UNITED STATES

October Term, 1957

No. 561

BART LUIS CARITATIVO, PETITIONER,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA AND FRED R. DICKSON, WARDEN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITION FOR CERTIORARI FILED AUGUST 1, 1957.
CERTIORARI GRANTED OCTOBER 21, 1957.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 561

BART LUIS CARITATIVO, PETITIONER

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA AND HARLEY O. TEETS, WARDEN.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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1 (File endorsement omitted.)

In the Supreme Court of the State of California

In the Matter of the Application of BART LUIS CARITATIVO For a Writ of Habeas Corpus

HARLEY O. TEETS, WARDEN, CALIFORNIA STATE PRISON, SAN QUENTIN, CALIFORNIA, RESPONDENT

Petition for a writ of habeas corpus and application for stay of execution

Filed May 7, 1957

The petition of GEORGE T. DAVIS respectfully shows:

I

That he is the Attorney for the above named BART LUIS CARITATIVO, and files this petition on behalf of said BART LUIS CARITATIVO.

II

That said CARITATIVO is imprisoned, detained and restrained of his liberty by HARLEY O. TEETS, Warden of the California State Prison at San Quentin, County of Marin, California, under commitments issued out of the Superior Court
2 of the County of Marin, resulting from judgments imposing on two counts sentences of death.

III

Petitioner alleges that said detention is and will continue to be unlawful, illegal and in violation of petitioner's rights to due process and equal protection of the law as guaranteed under the 14th Amendment of the Constitution of the United States.

IV

Statistical data pertinent to the within petition is as follows:

1. CARITATIVO's conviction of two murders was affirmed by this Court on automatic appeal on February 1, 1956.

People v. *Caritativo*, 46 A. C. 67

2. Petition for rehearing denied February 29, 1956.

3. Petition for Certiorari in the Supreme Court of the United States denied June 4, 1956.

4. Death penalty imposed June 18, 1956, and date of execution set for August 31, 1956.

5. Petition for Writ of Mandate in the Superior Court of Marin County seeking to compel the Warden to institute proceedings to determine present sanity of CARITATIVO filed August 30, 1956, and denied on same date.

6. Appeal from denial of petition for Writ of Mandate filed in the Supreme Court of California on August 31, 1956, and stay of execution pending appeal granted.

3 7. Appeal dismissed by this court on November 20, 1956, and remittitur issued forthwith.

Caritativo v. *Teets*, 47 A. C. 308

8. On January 29, 1957, a petition for Certiorari was filed in the Supreme Court of the United States challenging the constitutionality of the above mentioned decision of the Supreme Court of California in the Mandamus proceedings. On the same date a stay of execution was ordered by Justice William O. Douglas. On February 25, 1957, the petition for Writ of Certiorari was denied.

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9. A new and presently existing date of execution has been set and the present death date is May 24, 1957.

V

The illegality complained of arises from the following facts:

1. It is the opinion and belief of your petitioner that CARITATIVO is presently insane and therefore not subject to execution under California Law.

2. CARITATIVO's custodian, the Warden of San Quentin Prison, has reason to believe that said CARITATIVO is presently insane and therefore not subject to execution under California Law.

3. The Warden of San Quentin Prison, although requested to do so, has arbitrarily refused to institute proceedings to determine the present sanity of CARITATIVO in accordance with the provisions of Section 3700 and 3701 of the California Penal Code.

4. Unless ordered to do so, the Warden will persist in his refusal to institute proceedings to determine the present sanity of CARITATIVO, and as a result said CARITATIVO, who is presently insane, will be put to death on May 24, 1957, in violation of his rights under California Law and as guaranteed by the Constitution of the United States.

As an additional and separate ground for the issuance of a Writ of Habeas Corpus, petitioner alleges the following:

I

CARITATIVO's trial for two murders began before a Jury in Marin County on January 6, 1955. At that time his counsel had entered a plea of not guilty on his behalf, and this was the sole issue at the trial. Subsequently, on or about January 10, 1955, after the selection of the Jury and opening statements by counsel for the prosecution and for the defense, and the testimony of several prosecution witnesses, CARITATIVO demanded in open court the right to change counsel on the grounds he had lost his faith and trust in his then counsel. After several days of discussion and hearings in Chambers, out of the presence of the Jury, the Trial Court dismissed CARITATIVO's counsel, who had represented him up to that moment, and appointed two new attorneys to represent CARITATIVO during the remainder of the trial.

A short continuance was granted, motions for mistrial were denied, and the trial proceeded. On February 28, 1955, the Jury found CARITATIVO guilty on both counts of murder and made no recommendation, thereby subjecting him to the punishment of death on each count.

II

Following the verdict of the Jury, but before pronouncement of judgment, CARITATIVO's newly appointed counsel made a formal plea to the court to be allowed at that time, and before sentence was pronounced, to enter a plea of not guilty by reason of insanity in order that a trial on said issue

might be had either before the same Jury, or a new Jury sworn for that purpose. Argument was heard and the motion was denied. At the same time a motion was also made for a trial of the defendant on the grounds of presently existing insanity, and the Trial Court likewise denied said motion. (See Transcript on Pages 3956–3959). Thereupon the court pronounced judgment and sentenced CARITATIVO to death.

III

It is the contention of petitioner that under the circumstances of this case it was a violation of CARITATIVO's rights under the 14th Amendment to the Constitution of the United States to deny him any opportunity to be tried upon the plea of not guilty by reason of insanity. It is true that his first counsel had failed to enter said plea on his behalf and had they continued as his counsel throughout the trial it might be said that he was bound by such failure. However, when the Court granted his motion for a change of counsel and gave him two new attorneys, it was the deprivation of fundamental rights for said Court to refuse to allow said CARITATIVO to be effectively represented by the newly appointed counsel who sought to obtain a trial for said CARITATIVO on the plea of not guilty by reason of insanity.

IV

The posture of the trial after the appointment of new counsel, insofar as the time for the entrance of a plea of not guilty by reason of insanity, was unique and unprecedented. The Jury had been selected and the trial began. Therefore an effective plea of not guilty by reason of insanity could not have been entered in the course of the then proceeding trial because there could be no opportunity to examine said jurors on voir dire examination. The only way defendant's rights could be protected would be for the Court to have granted a mistrial and to have begun again with the selection of a new Jury. This the Court refused to do. It was the position of the Court that defendant's rights would be protected by the entry of a plea of not guilty by reason of insanity at any time prior to the rendition of a verdict on the not guilty plea. CARITATIVO's counsel could not follow such procedure,

because under the circumstances of the case to have entered such a plea after the commencement of the trial
7 and without voir dire examination of the jurors and after the dismissal of previous counsel, would have been tantamount to a plea of guilty on the main trial with nothing left for the Jury but a trial on the issue of insanity.

V

The above was brought to the attention of the Court, in Chambers, but the Court nevertheless took the position that the plea of not guilty by reason of insanity would have to be entered during the course of the trial and before the verdict of the Jury or not at all. Counsel for CARITATIVO took the position that irreparable harm and prejudice would result to the defendant by entering the plea before the rendition of a verdict, but on the contrary that the entry of the plea of not guilty by reason of insanity after the verdict and before judgment would be the only way it could be done without completely violating the defendant's rights.

VI

As a result of the foregoing CARITATIVO was denied the right to a trial on a plea of not guilty by reason of insanity, and to this date has never had such a trial on such plea.

WHEREFORE, petitioner prays as follows:

1. That a Writ of Habeas Corpus may issue directed to HARLEY O. TEETS, commanding him that he have the body of said CARITATIVO, by him imprisoned, detained and restrained, before this Honorable Court at a time and
8 place to be therein specified, and for such other relief as the Court may deem meet and proper in the premises.

2. That this Court issue a stay of execution pending the determination of the above and that CARITATIVO's execution now scheduled for May 24, 1957, be stayed until further order of this court.

Dated: May 7th, 1957

(S) George T. Davis
GEORGE T. DAVIS
Attorney for Bart Luis Caritativo

9 Duly sworn to by George T. Davis, Jurat Omitted in Printing.

10 IN THE SUPREME COURT OF THE STATE OF CALIFORNIA IN BANK

IN RE CARITATIVO ON HABEAS CORPUS

Order denying Petition for Writ of Habeas Corpus and Application for Stay of Execution—Filed May 8, 1957.

Petition for writ of habeas corpus and application for stay of execution DENIED.

This order is final forthwith.

(FILE ENDORSEMENT OMITTED)

11 SUPREME COURT OF CALIFORNIA

Clerk's Certificate to Record

I, WILLIAM I. SULLIVAN, Clerk of the Supreme Court of the State of California, hereby certify that the annexed is a true and correct copy of the record in the above entitled proceeding, as shown by the records of my office, and includes the following:

Petition for Writ of Habeas Corpus, filed May 7, 1957.

Order Denying Petition for Writ of Habeas Corpus, filed May 8, 1957.

WITNESS my hand and the seal of the court this 3d day of June, 1957.

WILLIAM I. SULLIVAN,
Clerk of Supreme Court of the State of California.
By: HARRY M. GARDISER,
Chief Deputy.

12 SUPREME COURT OF THE UNITED STATES

No. 129 Misc. October Term 1957

ORDER GRANTING PETITION FOR CERTIORARI AND MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

October 21, 1957

On petition for writ of Certiorari to the Supreme Court of the State of California.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 561 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

OCTOBER 21, 1957.

U. S. GOVERNMENT PRINTING OFFICE 1958